
COUNTY AGREEMENT NUMBER XXXXX
AGREEMENT WITH [CONSULTANT'S NAME]
FOR [SERVICES TO BE PROVIDED]

[Notes: (1) Use Times New Roman 11; (2) Italics indicate where text needs to be revised for each version.]

This Contract ("Contract") is made and entered into on _____ by and between the County of San Diego, a political subdivision of the State of California, ("County") and _____ [enter full corporate title] a _____ [insert legal status (Calif. corp., partnership, etc.)] ("Consultant"), with reference to the following facts:

RECITALS

- A. Pursuant to Administrative Code section 401, the County's Director of Purchasing and Contracting is authorized to award this Contract for [insert purpose.] *[This option is used where the authority of the Director of Purchasing and Contracting to award the contract is derived from Administrative Code section 401; if used, delete alternative paragraph A above.]*
- B. Consultant is specially trained and possesses certain skills, experience, education and competency to perform the work described herein.
- C. The Agreement shall consist of this pro forma Agreement, Exhibit A Statement of Work, A-1 Contractor's [Bid or Proposal dated (with any revisions identified)], Exhibit B Insurance Requirements and Exhibit C, [Payment schedule]. In the event that any provision of the Pro Forma Agreement or its Exhibits, A, A-1, B or C, conflicts with any other term or condition, precedence shall be: First (1st) the Pro Forma; Second (2nd) Exhibit B; Third (3rd) Exhibit A; Fourth (4th) Exhibit C; Fifth (5th) Exhibit A-1.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1
PERFORMANCE OF WORK

- 1.1 Standard of Performance. Consultant shall, in a good and workmanlike manner and in accordance with the highest professional standards, perform and complete the work and provide the services required of Consultant by this Contract.
- 1.2 Consultant's Key Personnel. Consultant's duties under this Contract shall be performed on behalf of Consultant by _____, [if more than one, list all names] Consultant's Key Personnel. Consultant represents and warrants that (1) Consultant's Key Personnel has fulfilled all applicable requirements of the laws of the State of California to perform the work under this Contract and has full authority to act for Consultant hereunder. Consultant's Key Personnel shall perform the work or oversee the performance of the work described in Exhibit A, Statement of Work. Consultant's Key Personnel shall not be changed during the Term of the Contract without County's prior written consent. County reserves the right to terminate this Contract pursuant to section 7.1, "Termination for Default," if Consultant's Key Personnel should leave Consultant's employ, or, if in County's judgment, the work hereunder is not being performed by Consultant's Key Personnel.
- 1.3 Independent Contractor. For all purposes under this Contract, Consultant is an independent contractor, and neither Consultant nor Consultant's employees or subcontractors shall be deemed to be employees of County for any reasons. Consultant shall perform its obligations under this Contract according to Consultant's own means and methods of work which shall be in the exclusive charge and under the control of Consultant, and which shall not be subject to control or supervision by County except as to the results of the work. Neither Consultant nor Consultant's employees or subcontractors shall be entitled to any benefits to which County employees are entitled including, without limitation, overtime, retirement, workers' compensation and injury leave.
- 1.4 Consultant's Agents, Employees and Subcontractors. Consultant shall obtain, at Consultant's expense, all agents, employees and subcontractors required for Consultant to perform the services under this Contract. All such services shall be performed by Consultant's Key Personnel, or under Consultant's Key Personnel's supervision by persons authorized by law to perform such services. Retention by Consultant of any agent, employee or subcontractor shall be at Consultant's sole cost and expense, and County shall have no obligation to pay Consultant's agents, employees or subcontractors; to support any such person's or entity's claim against Consultant; or to defend Consultant against any such claim.
- 1.4.1 Consultant Responsibility. If Consultant uses a subcontractor for any portion of the services required under this Contract, Consultant remains primarily responsible for carrying out all the terms of this Contract, including the subcontractor's performance and insuring that the subcontractor retains and makes its records available in

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accordance with this Contract. Consultant shall not allow any subcontractor to enter into a sub-subcontract for services under this Contract without County's prior written consent.

1.4.2 Subcontracts. Consultant shall ensure that all subcontracts incorporate by reference the following terms of this Contract: 1.1, 1.3, 1.5, 3.2, 4.3, 4.4, 4.5, 7.1, 7.2, 7.3, 8.1, 8.3, 8.5, 8.8, 8.9, 8.10, 9.1, 9.2, 10.2, 13.1, 13.2, 15.2, 15.5, 15.6, 15.10, 15.12 and 15.16. If Consultant enters into one or more subcontracts, the subcontract(s) shall not prohibit the subcontractor from negotiating directly with and entering into a contract with County.

1.4.3 Change of Subcontractors. Before Consultant enters into any subcontract with a subcontractor not listed in Exhibit A, Statement of Work, Consultant shall obtain the written consent of the Contracting Officer's Technical Representative ("COTR"). "Subcontractor" means any entity, other than County, that furnishes services or supplies to Consultant that are relevant to this Contract other than standard commercial supplies, office space, and printing services.

1.5 Consultant's Equipment. Consultant has secured or shall secure at Consultant's own expense all persons, employees, labor, supplies, materials, equipment, transportation, printing and facilities, except those expressly specified herein to be furnished by County, to perform the services required under this Contract. All such services shall be performed by Consultant, or under Consultant's supervision, by persons authorized by law to perform such services.

County shall not be responsible nor be held liable for any damage to person or property resulting from the use, misuse or failure of any equipment used by Consultant or any of Consultant's employees, even though such equipment be furnished, rented or loaned to Consultant by County. The acceptance or use of any such equipment by Consultant or any of Consultant's employees shall be construed to mean that Consultant accepts full responsibility for and agrees to exonerate, indemnify and save harmless County from and against any and all claims for any damage whatsoever resulting from the use, misuse or failure of such equipment, whether such damage be to the employee or property of Consultant, other Consultants, County, or other persons. Equipment includes, but is not limited to material, tools and machinery.

ARTICLE 2
SCOPE OF WORK

2.1 Statement of Work. Consultant shall perform the work described in the "Statement of Work" attached as Exhibit A to this Contract, and by this reference incorporated herein, except for any work therein designated to be performed by County.

2.2 Right To Acquire Equipment and Services. Nothing in this Contract shall prohibit the County from acquiring the same type or equivalent type of equipment or services from other sources.

ARTICLE 3
CONTRACT TERM

3.1 Contract Term. This Contract shall be effective on _____, and shall terminate on _____ ("Term").

3.2 Options to Extend. At the Contracting Officer's sole discretion, County may extend the Term of this Contract in one or more increments, for a total of ____ years beyond the expiration of the Initial Term, but in no event shall extend beyond _____, 20____, pursuant to Exhibit C, Payment Terms or the adjustment factor identified. Unless County notifies Contractor in writing, not less than 30 days prior to the expiration date, that County does not intend to renew the Agreement, this Agreement will be automatically renewed for another year.

***[INCLUDE SECTION 3.2 ONLY IF EXTENSIONS APPLY; AND THE LAST SENTENCE ONLY IF THE
EXTENSIONS ARE TO BE AUTOMATIC..]***

ARTICLE 4
COMPENSATION

4.1 Compensation. County will pay Consultant a fee not to exceed \$_____ ("Maximum Compensation"), pursuant to Exhibit C, Payment Terms, for the satisfactory completion of the services specified in Exhibit A, Statement of Work.

4.1.1 Accounting System And Fiscal Monitoring. Consultant shall maintain and use an accounting and financial support system to monitor, control and verify costs.

4.2 Invoices and Payment.

4.2.1 Invoices. Payment for the work performed under this Contract shall be in accordance with Exhibit C, unless Consultant and Contracting Officer agree in writing to another payment method. Consultant shall submit

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invoices to the COTR as specified in Exhibit C. Consultant's monthly invoices shall include a statement certifying whether it is in compliance with section 8.9 of this Contract.

4.2.2 Payments. County will pay Consultant in arrears only after receipt and approval by COTR of a properly submitted, detailed and itemized original invoice referencing the Contract number and the information specified in Exhibits A and C. Each invoice, or portion thereof, so approved and paid shall constitute full and complete compensation to Consultant for the work completed during the billing period pursuant to Exhibit A and Exhibit C. Payment shall be NET 30 days from receipt and approval of invoice unless otherwise stated.

4.2.3 Conditions Prerequisite To Payments. County may elect not to make a particular payment if any of the following exists:

4.2.3.1. Misrepresentation. Consultant, with or without knowledge, made any misrepresentation of substantial and material nature with respect to any information furnished to County.

4.2.3.2 Unauthorized Actions by Consultant. Consultant took an action without receiving County's prior approval as required under this Contract.

4.2.3.3 Default. Consultant is in default of a term or condition of this Contract.

4.3 Availability of Funding. The County's obligation to make any payment under this Contract beyond the current fiscal year is contingent upon the availability of funding from which payment can be made. No legal liability on the part of the County shall arise for payment beyond June 30 of the calendar year unless funds are designated by the County and are made available for payment of this Contract.

4.4 Reduction in Funding. County may terminate this Contract or reduce compensation and service levels proportionately upon 30 days' written notice to Consultant if Federal, State or County funding for this Contract ceases or is reduced before the expiration of the Term of this Contract. If funding for this Contract is reduced, County and Consultant shall meet within 10 days of written notice to Consultant of a reduction in funding to renegotiate this Contract based upon the modified level of funding. If County and Consultant fail to reach an agreement within 10 days of the first meeting, either party may terminate this Contract with 10 days written notice of termination.

If this Contract is terminated in accordance with the terms of this subsection, Consultant shall be entitled to retain all sums paid as of the effective date of such termination, subject to any payment offset to which County may be entitled, for damages or otherwise, under the terms of this Contract. In no event shall Consultant be entitled to any loss of profits or other compensation on the terminated portion of this Contract.

4.5 Disallowance. If Consultant receives payment for work under this Contract which is later disallowed by County, Consultant shall promptly refund the disallowed amount to County on request, or, at its option, County may offset the amount disallowed from any payment due or to become due to Consultant under any Contract with County.

ARTICLE 5
CONTRACT ADMINISTRATION

5.1 County's Contracting Officer. The Director of Purchasing and Contracting is designated as the contracting officer ("Contracting Officer") and is the only County official authorized to make any changes to this Contract.

5.2 Consultant's Representative. Consultant designates the following individual as the Consultant's Representative: **[add name, address, phone number and email address]**

5.3 COTR. The County designates the following person as the Contracting Officer's Technical Representative ("COTR"): **[add name, address, phone number and email address]** The COTR will administer this Contract by chairing progress meetings with Consultant, receiving and approving Consultant invoices for payment, auditing and inspecting Consultant's records, inspecting Consultant's work, and providing other technical guidance as required. The COTR is not authorized to change any terms and conditions of this Contract. Only the Contracting Officer, by issuing a properly executed amendment to this Contract, may change the terms or conditions of this Contract.

5.4 Administrative Adjustments. Notwithstanding any provision of this Contract to the contrary, the COTR may make Administrative Adjustments ("AA") to this Contract, which do not change the purpose or intent of the Statement of Work, the Terms and Conditions, the Contract Term or the Maximum Compensation. Each AA shall be in writing and shall be signed by the COTR and Consultant. All inquiries about an AA will be referred directly to the COTR.

5.5 Contract Progress Meeting. The COTR and other County personnel, as appropriate, will meet periodically with Consultant to review the Contract performance. At these meetings, the COTR will apprise Consultant of how County views Consultant's

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performance, and Consultant will apprise COTR of any problems Consultant is having. Consultant shall also notify the Contracting Officer in writing of any work being performed that Consultant considers beyond the scope of this Contract. Appropriate action shall be taken to resolve outstanding issues. The minutes of these meetings will be reduced to writing and signed by the COTR and Consultant. If Consultant does not concur with the minutes, Consultant shall submit a written description of any area of disagreement within 10 days of the meeting. Appropriate action will be taken to resolve any areas of disagreement.

ARTICLE 6
CHANGES

- 6.1 **Contracting Officer.** The Contracting Officer may at any time, by a written order, make changes ("Changes"), within the general scope of this Contract, in the work to be performed, the time (i.e. hours of the day, days of the week, etc. when Consultant shall perform) and place of performance thereof. If any such Change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this Contract, an equitable adjustment shall be made in the Contract price or delivery schedule, or both, and the Contract shall be modified in writing accordingly.
- 6.2 **Claims.** Consultant must assert any claim for adjustment under this Article within 30 days from the date of receipt by the Consultant of the notification of Change. However, if the Contracting Officer determines that the facts justify such action, the Contracting Officer may receive and act upon any such claim asserted at any time before final payment under this Contract. Where the cost of property made obsolete or excess as a result of a Change is included in Consultant's claim for adjustment, the Contracting Officer may prescribe the manner of disposition of such property. Failure to agree to any adjustment shall be a dispute concerning a question of fact under Article 14, "Disputes," of this Contract. However, nothing in this subsection shall excuse the Consultant from proceeding with this Contract as changed.

ARTICLE 7
TERMINATION

- 7.1 **Termination For Default.** Upon Consultant's breach of this Contract, County may terminate this Contract in whole or part. Prior to termination for default, County will send Consultant written notice specifying the default. The notice will give Consultant at least 15 days from the date the notice is issued to cure the default or make progress satisfactory to County in curing the default. If County determines that the default contributes to the curtailment of an essential service or poses an immediate threat to life, health or property, County may terminate this Contract immediately upon issuing oral or written notice to Consultant without any prior notice or opportunity to cure. In the event of termination under this Article, all finished or unfinished documents, and other materials, prepared by Consultant under this Contract shall become the sole and exclusive property of County. In the event of such termination, County may purchase or obtain the work elsewhere, and Consultant shall be liable for the difference between the prices for the work set forth in this Contract and the actual cost thereof to County.
- 7.1.1 If, after notice of default of this Contract it is determined for any reason that the Consultant was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued as a Termination for Convenience.
- 7.2 **Termination For Convenience.** The County may, by written notice stating the extent and effective date, terminate this Contract for convenience in whole or in part, at any time. The County shall pay the Contractor as full compensation for work performed in accordance with the terms of this Contract until such termination:
- 7.2.1 The unit or pro rata price for any delivered and accepted portion of the work.
- 7.2.2 A reasonable amount, as costs of termination, not otherwise recoverable from other sources by the Contractor as approved by the County, with respect to the undelivered or unaccepted portion of the order, provided compensation hereunder shall in no event exceed the total price.
- 7.2.3 In no event shall the County be liable for any loss of profits on the resulting order or portion thereof so terminated.
- 7.2.4 County's termination of this Agreement for convenience shall not preclude County from taking any action in law or equity against Contractor for:
- 7.2.4.1 Improperly submitted claims, or
- 7.2.4.2 Any failure to perform the work in accordance with the Statement of Work, or
- 7.2.4.3 Any breach of any term or condition of the Agreement, or
- 7.2.4.4 Any actions under any warranty, express or implied, or

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7.2.4.5 Any claim of professional negligence, or

7.2.4.6 Any other matter arising from or related to this Contract, whether known, knowable or unknown before, during or after the date of termination.

7.2.5 County's termination of this Contract for convenience shall not preclude County from taking any action in law or equity against Consultant for any matter arising from or related to this Contract.

7.3 Suspension Of Work. The Contracting Officer may order Consultant, in writing, to suspend, delay, or interrupt all or any part of the work of this Contract for the period of time that the Contracting Officer determines is in County's best interest.

7.4 Remedies Not Exclusive. The rights and remedies of County provided in this Article shall not be exclusive and are in addition to any other rights and remedies provided by law or equity.

ARTICLE 8
COMPLIANCE WITH LAWS AND REGULATIONS

8.1 Compliance with Laws and Regulations. Consultant shall at all times perform its obligations hereunder in compliance with all applicable federal, State, and County laws and regulations.

8.2 Consultant's Permits and License. Consultant certifies that it possesses and shall continue to maintain or shall cause to be obtained and maintained, at no cost to the County, all approvals, permissions, permits, licenses, and other forms of documentation required for it and its employees to comply with all applicable statutes, ordinances, and regulations, or other laws, that may apply to performance of work hereunder. County may reasonably request and review all such applications, permits, and licenses.

8.3 Equal Opportunity. Consultant shall comply with the provisions of Title VII of the Civil Rights Act of 1964 in that Consultant shall not discriminate against any individual with respect to his or her compensation, terms, conditions, or privileges of employment nor shall Consultant discriminate in any way that would deprive or intend to deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee because of such individual's race, color, religion, sex, national origin, age, handicap, medical condition, sexual orientation or marital status.

8.4 Affirmative Action. If Consultant employs 15 or more full-time permanent employees, Consultant shall comply with the Affirmative Action Program for Vendors as set forth in Article IIIk (commencing at Section 84) of the San Diego County Administrative Code, which program is incorporated herein by reference. A copy of this Affirmative Action Program will be furnished by the COTR upon request or may be obtained from the County of San Diego Internet web-site (www.sdcounty.ca.gov).

8.5 Drug and Alcohol-Free Workplace. In Board of Supervisors' Policy C-25, County of San Diego Drug and Alcohol Use Policy, the Board of Supervisors recognized that those who perform services or work for County under contract should perform the services or work as safely, effectively and efficiently as possible.

8.5.1 Consultant and Consultant's employees, while performing work for the County, or while using County equipment:

8.5.1.1 Shall not be in any way impaired because of being under the influence of alcohol or a drug.

8.5.1.2 Shall not possess, consume or be under the influence of alcohol or an illegal drug.

8.5.1.3 Shall not sell, offer, or provide alcohol or a drug to another person.

8.5.2 Section 8.5 is a material condition of this Contract. If the Contracting Officer determines that Consultant and/or Consultant's employee(s) has not complied with section 8.5, County may terminate this Contract for default and may also terminate any other Contract Consultant has with County.

8.6 Board of Supervisors' Policies. Consultant represents that it is familiar, and shall use its best efforts to comply, with the following policies of the Board of Supervisors: Board Policy B-67, which encourages the County's contractors to use products made with recycled materials, reusable products, and products designed to be recycled; and Board Policies B-53 and B-39a, which encourage the participation of small and disabled veterans' business enterprises in County procurements. Board of Supervisors Policies are available on the County of San Diego web site. ***[NOTE: OTHER POLICIES MAY APPLY FOR CERTAIN TYPES OF SERVICES OR WORK WHICH SHOULD BE SPECIFICALLY REFERENCED.]***

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- 8.7 Cartwright Act. Following receipt of final payment under the Contract, Consultant assigns to County all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 1 of Part 2 of Division 7 of the Business and Professions Code, commencing with section 16700), arising from purchases of goods, materials, or work by the Consultant for sale to County under this Contract.
- 8.8 Hazardous Materials. Consultant shall comply with all Environmental Laws and all other laws, rules, regulations, and requirements regarding Hazardous Materials, health and safety, notices, and training. Consultant shall not store any Hazardous Materials on any County property for more than 90 days or in violation of the applicable site storage limitations imposed by Environmental Law. At its sole expense, Consultant shall take all actions necessary to protect third parties, including, without limitation, employees and agents of County, from any exposure to Hazardous Materials generated or utilized in Consultant's performance under this Contract. Consultant shall report to the appropriate governmental agencies all discharges, releases, and spills of Hazardous Materials that are required to be reported by any Environmental Law and to immediately notify the County of it. Consultant shall not be liable to County for County's failure to comply with, or for County's violation of, any Environmental Law. As used in this section, the term "Environmental Laws" means any and all federal, State and local laws, ordinances, rules, decrees, orders, regulations or court decisions (including the "common law"), relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions or other similar substances or conditions. One such law is the Resource Conservation and Recovery Act. As used in this section, the term "Hazardous Materials" means any chemical, compound, material, substance or other matter that: (a) is a flammable, explosive, asbestos, radioactive nuclear medicine, vaccine, bacteria, virus, hazardous waste, toxic, overtly injurious or potentially injurious material, whether injurious or potentially injurious by itself or in combination with other materials; (b) is controlled, referred to, designated in or governed by any Environmental Laws; (c) gives rise to any reporting, notice or publication requirements under any Environmental Laws; or (d) is any other material or substance for which there may be any liability, responsibility or duty on County or Consultant with respect to any third person under any Environmental Laws.
- 8.9 Debarment And Suspension. Consultant certifies that it, its principals, its employees and its subcontractors:
- 8.9.1 Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any State or Federal Department or agency.
 - 8.9.2 Have not within a 3-year period preceding this Contract been convicted of, or had a civil judgment rendered against them for, the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, State, or local) transaction; violation of Federal or State anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - 8.9.3 Are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, State, or local) with commission of any of the offenses enumerated in the paragraph above; and
 - 8.9.4 Have not within a 3-year period preceding this Contract had one or more public transactions (federal, State, or local) terminated for cause or default.
- 8.10 Work to be performed by Consultant in accordance with this Contract may be a "public work" under Labor Code § 1720, et seq. If Consultant will receive federal funds, this Contract may also be subject to the payment of prevailing wages pursuant to the Davis-Bacon Act, 40 USC § 3141 et seq., and other federal laws. It is the sole responsibility of Consultant to ensure that all workers who perform work pursuant to this Contract are paid the correct rate of prevailing wages. When working on a federally funded project, Consultant shall ensure that all workers entitled to the payment of prevailing wages receive the higher of the applicable State or federal prevailing wage.
- County has obtained from the Director of the California Department of Industrial Relations general prevailing wage determinations for the locality in which work is being performed. These determinations are on file and available in the Department of Purchasing and Contracting, 10089 Willow Creek Rd., Suite 150, San Diego, CA 92131-1699, and are available from the Department of Industrial Relations on the internet at www.dir.ca.gov. Federal prevailing wage rates are available from the U.S. Department of Labor on the internet at www.access.gpo.gov.
- Consultant acknowledges that because portions of the work to be performed by Consultant may be subject to the payment of State and federal prevailing wages, certain requirements must be included in this Contract. Consultant certifies that it is generally aware of State and federal prevailing wage requirements and shall be bound by these requirements to the extent applicable to the work performed, including, but not limited to, the following:

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- 1) If a worker is paid less than the prevailing wage rate owed for a calendar day or portion of a day, Consultant shall pay the worker the difference between the prevailing wage rate and the amount actually paid as specified in Labor Code section 1775;
- 2) Consultant shall maintain and make available payroll and worker records in accordance with Labor Code §§ 1776 and 1812;
- 3) If apprentices are employed on the project, Consultant shall ensure compliance with Labor Code § 1777.5;
- 4) Consultant is aware of the limitations imposed on overtime work by Labor Code § 1810, et seq. and shall be responsible for any penalties levied in accordance with Labor Code § 1813 for failing to pay required overtime wages;
- 5) Consultant shall be bound by each of the stipulations set forth at 40 USC § 3142(c), including the obligations to i) pay all laborers or mechanics employed directly on the site of the work, unconditionally and at least once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at the time of payment, computed at the required wage rate; ii) post the applicable prevailing wage scale in a prominent and accessible place at the work site; and iii) agree that there may be withheld from accrued payments funds necessary to ensure workers are paid the required wage rate; and
- 6) In accordance with 40 USC § 3143, all or part of this Contract may be terminated for failure to pay the required prevailing rate of wages.

[WORK PERFORMED DURING THE DESIGN AND PRE-CONSTRUCTION PHASES OF CONSTRUCTION, SUCH AS LAND SURVEYING, SITE INSPECTION, AND SOIL TESTING, OR WORK PERFORMED IN CONNECTION WITH ALTERATION, DEMOLITION, INSTALLATION OR REPAIR WORK TRIGGERS THE REQUIREMENT TO PAY PREVAILING WAGES (IF THE CONTRACT IS OVER \$1,000). IF THE CONTRACT REQUIRES THE CONSULTANT TO DO THIS TYPE OF WORK, INCLUDE SECTION 8.10 IN THE CONTRACT. IF YOU ARE UNSURE WHETHER THE WORK REQUIRED BY THE CONTRACT WOULD TRIGGER THE REQUIREMENT TO PAY PREVAILING WAGES, CONTACT COUNTY COUNSEL TO DETERMINE IF SECTION 8.10 MUST BE INCLUDED IN THE CONSULTANT CONTRACT.]

ARTICLE 9
CONFLICTS OF INTEREST; CONSULTANT'S CONDUCT

- 9.1 Conflicts of Interest. Consultant presently has no interest including, but not limited to, other projects or independent contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with the performance of work required under this Contract. Consultant shall not employ any person having any such interest in the performance of this Contract.
- 9.2 Conduct of Consultant; Privileged Information.
 - 9.2.1 Throughout the term of this Contract, Consultant shall inform County of all of Consultant's interests, if any, which are, or which the Consultant believes to be, incompatible with any interests of the County.
 - 9.2.2 Consultant shall not accept any gratuity or special favor from individuals or organizations with whom Consultant is doing business or proposing to do business, in accomplishing the work under this Contract.
 - 9.2.3 Consultant shall not use for personal gain or make other improper use of privileged information which is acquired in connection with this Contract. The term "privileged information" includes, but is not limited to, unpublished information relating to technological and scientific development; medical, personnel, or security records of the individuals; anticipated materials requirements or pricing actions; and knowledge of selection of a contractor in advance of official announcement.
 - 9.2.4 Consultant shall not directly or indirectly offer or give any gift, gratuity, or favor to any County employee.
- 9.3 Prohibited Contracts. Consultant certifies that this Contract does not violate County Administrative Code section 67, and that Consultant is not, and will not subcontract with, any of the following:
 - 9.3.1 Persons employed by County or public agencies for which the Board of Supervisors is the governing body.
 - 9.3.2 Profit-making firms or businesses in which employees described in sub-section 9.3.1 serve as officers, principals, partners, or major shareholders;

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- 9.3.3 Persons who, within the immediately preceding 12 months came within the provisions of sub-section 9.3.1 and who (1) were employed in positions of substantial responsibility in the area of service to be performed by the Contract, or (2) participated in any way in developing the Contract or its service specifications; and
- 9.3.4 Profit-making firms or businesses in which the former employees described in subsection 9.3.3 serve as officers, principals, partners, or major shareholders.
- 9.4 California Political Reform Act and Government Code Section 1090 Et Seq. Consultant acknowledges that the California Political Reform Act ("Act"), Government Code section 81000 et seq., provides that consultants hired by a public agency, such as County, may be deemed to be a "public official" subject to the Act if the consultant advises the agency on decisions or actions to be taken by the agency. The Act requires such public officials to disqualify themselves from participating in any way in such decisions if they have any one of several specified "conflicts of interest" relating to the decision. To the extent the Act applies to Consultant, Consultant shall abide by the Act. In addition, Consultant acknowledges and shall abide by the conflict of interest restrictions imposed on public officials by Government Code section 1090 et seq.
- 9.5 Public Disclosure of Gifts and Campaign Contributions. Consultant represents that this Contract has been executed with full knowledge of, and in compliance with, public disclosure requirements and does not violate the provisions of San Diego County Charter Section 1000.1. Disclosure forms are available at the Clerk of the Board's office at 1600 Pacific Highway, Room 402 and on the Clerk of the Board's website, www.sdcounty.ca.gov/cob/ocd/propa form.doc. Original Disclosure Forms should be filed at the Clerk of the Board's office.

[INCLUDE SECTION 9.5 ONLY IF THE BOARD OF SUPERVISORS APPROVES THE CONTRACT.]

ARTICLE 10
INDEMNITY AND INSURANCE

- 10.1 Indemnity. County shall not be liable for, and Consultant shall defend and indemnify County and its officers, agents, employees and volunteers (collectively, "County Parties"), against any and all claims, deductibles, self-insured retentions, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including attorneys' fees and court costs (hereinafter collectively referred to as "Claims"), which arise out of, pertain to or relate to the negligence, recklessness or willful misconduct of Consultant or its officers, employees, agents, contractors, licensees or servants.

Indemnity. To the fullest extent permitted by law, County shall not be liable for, and Consultant shall defend and indemnify County and its officers, agents, employees and volunteers (collectively "County Parties"), against any and all claims, deductibles, self-insured retentions, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including attorneys' fees and court costs (hereinafter collectively referred to as "Claims"), which arise out of or are in any way connected to the work covered by this Contract arising either directly or indirectly from any act, error, omission or negligence of Consultant or its officers, employees, agents, contractors, licensees or servants, including, without limitation, Claims caused by the sole passive negligent act or the concurrent negligent act, error or omission, whether active or passive, of County Parties. Consultant shall have no obligation, however, to defend or indemnify County Parties from a Claim if it is determined by a court of competent jurisdiction that such Claim was caused by the sole active negligent act or willful misconduct of County Parties.

[USE THE FIRST INDEMNITY PARAGRAPH IF THE CONSULTANT IS A LICENSED ARCHITECT, LICENSED LANDSCAPE ARCHITECT, REGISTERED PROFESSIONAL ENGINEER, OR LICENSED LAND SURVEYOR. USE THE SECOND INDEMNITY PARAGRAPH IF THE CONSULTANT IS NOT ONE OF THESE FOUR PROFESSIONALS.]

- 10.2 Insurance. Before executing this Contract, Consultant shall obtain at its own cost and expense, and keep in force and effect during the Term of this Contract, including all extensions, the insurance specified in Exhibit B, "Insurance Requirements."

ARTICLE 11
AUDIT AND INSPECTION OF RECORDS

- 11.1 Cost or Pricing Data. If Consultant submitted cost or pricing data in connection with the compensation provided for in this Contract or any change or modification thereto, the Contracting Officer or his representatives who are employees of the County or its agent may examine all

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books, records, documents and other data of Consultant related to the negotiation, compensation or performance of the Contract and any change or modification thereto, for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data submitted.

- 11.2 Availability. The materials described in section 11.1 shall be made available at Consultant's office at all reasonable times for inspection, audit or reproduction, for a period of three years from the date of final payment under this Contract, or if subsections 11.2.1 or 11.2.2 apply, shall be made available for the period specified in the applicable subsection.
- 11.2.1 If this Contract is completely or partially terminated, the records relating to the work not yet completed or accepted by County shall be made available for a period of three years from the date of any resulting final settlement.
- 11.2.2 Records that are generated during or as a result of resolution of disputes under Article 14 and records related to litigation or the settlement of claims arising out of the performance of this Contract, shall be made available until all such appeals, litigation, or claims have been disposed of, or three years after Contract completion, whichever is longer.

ARTICLE 12
INSPECTION OF SERVICE

- 12.1 Subject to Inspection. Consultant's performance (including work, materials, supplies, equipment furnished or used and workmanship related to the performance of this Contract) shall be subject to inspection and testing by County at all times during the Term of this Contract. Consultant shall cooperate with any inspector assigned by the County to determine whether Consultant's performance conforms to the requirements of this Contract. County shall perform such inspection in a manner that will not unduly interfere with Consultant's performance.
- 12.2 Specification and Requirements. If any work performed by Consultant does not conform to the specifications and requirements of this Contract, County may require Consultant to re-perform the work until it conforms to said specifications and requirements, at no additional cost. County may withhold payment until Consultant correctly performs the work. When the work to be performed is of such a nature that Consultant cannot correct its performance, County may require Consultant to immediately take all necessary steps to ensure that future performance of the work conforms to the requirements of this Contract; and to reduce the Maximum Compensation to reflect the reduced value of the work received by County. If Consultant fails to promptly re-perform the work or to take necessary steps to ensure that future performance of the work conforms to the specifications and requirements of this Contract, County may: a) without terminating this Contract, have the work performed by another consultant or otherwise, in conformance with the specifications of this Contract. County may charge Consultant, or withhold from payments due Consultant, any costs County incurs that are directly related to the performance of such work; or b) terminate this Contract for default.

ARTICLE 13
USE OF DOCUMENTS AND REPORTS

- 13.1 Confidential Information. All County data, reports, files, memoranda, correspondence, working papers and information relating to County business, shall be considered "confidential information" of County, whether or not the same are marked confidential or proprietary. Consultant shall protect County's confidential information in the same manner as Consultant protects its own confidential information, but in no case with less than reasonable care. Consultant shall use County's confidential information only for the purposes of this Contract and shall not disclose or release any such information to third parties with the exception of its employees or subcontractors who require access to such information to perform Consultant's work under this Contract.
- 13.2 Publication, Reproduction or Use of Materials. All reports, studies, information, data, statistics, forms, designs, plans, procedures, systems, and any other materials produced under this Contract, whether in printed or "electronic" format, shall be the sole and exclusive property of County. No materials produced in whole or in part under this Contract shall be subject to private use, copyright or patent right without the express prior written consent of County. Consultant shall submit reports to County in the form specified by County's Contract Representative or as may be specified elsewhere in this Contract. County may publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or any other materials prepared by Consultant under this Contract.

ARTICLE 14
DISPUTES

Notwithstanding any provision of this Contract to the contrary, the Contracting Officer shall decide any dispute concerning a question of fact arising out of this Contract that is not otherwise disposed of by the parties within a reasonable period of time.

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The decision of the Contracting Officer shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary or so grossly erroneous as necessarily to imply bad faith. Consultant shall proceed diligently with its performance hereunder pending resolution by the Contracting Officer of any such dispute. Nothing herein shall be construed as granting the Contracting Officer or any other administrative official, representative or board authority to decide questions of law.

ARTICLE 15
GENERAL PROVISIONS

- 15.1 Assignment. Consultant shall not assign any interest in this Contract, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the County, which consent shall not be unreasonably withheld.
- 15.2 Contingency. This Contract shall bind County only when approved by the Board of Supervisors or when signed by the Director of Purchasing and Contracting.
- 15.3 Entire Contract. This Contract, together with all exhibits attached hereto and other Contracts expressly referred to herein, constitute the entire Contract between the parties with respect to the subject matter contained herein. All prior or contemporaneous agreements, understandings, representations, warranties and statements, oral or written, including any proposals from Consultant and requests for proposals from County, are superseded by this Contract.
- 15.4 Exhibits. All exhibits referred to herein are attached hereto and incorporated by reference.
- 15.5 Further Assurances. The parties agree to perform such further acts and to execute and deliver such additional documents and instruments as may be reasonably required to carry out the provisions of this Contract and the intentions of the parties.
- 15.6 Governing Law. This Contract shall be governed, interpreted, construed and enforced in accordance with the laws of the State of California and any action brought relating to this Contract shall be held exclusively in a state court in the County of San Diego, State of California.
- 15.7 Headings. The Article captions and Section headings used in this Contract are inserted for convenience only and are not intended to define, limit or affect the construction or interpretation of any term or provision hereof.
- 15.8 Modification and Waiver. Except as otherwise provided in Article 6, "Changes," no modification, waiver, amendment or discharge of this Contract shall be valid unless the same is in writing and signed by both parties.
- 15.9 Neither Party Considered Drafter. Despite the possibility that one party may have prepared the initial draft of this Contract or played the greater role in preparing subsequent drafts, neither party shall be deemed to be the drafter of this Contract. In construing this Contract, no provision shall be construed in favor of one party on the ground that the provision was drafted by the other party.
- 15.10 No Other Inducement. The making, execution and delivery of this Contract by the parties hereto has not been induced by any representations, statements, warranties or agreements other than those expressed herein.
- 15.11 Notices. Notices required or allowed to be given under this Contract shall be in writing and either personally delivered or sent by certified mail, postage prepaid, return receipt requested, addressed to the party to be notified at the address specified herein. Any such notice shall be deemed received on the date of personal delivery to the party (or such party's authorized representative) or three business days after deposit in the U.S. Mail. All notices to County shall be sent to the COTR at the address specified in subsection 5.1. All notices to Consultant shall be sent to Consultant's Representative at the address specified in subsection 5.2. Either party may change the name and address of the person to receive notices for that party by providing written notice of the change to the other party.
- 15.12 Severability. If any term, provision, covenant or condition of this Contract is held to be wholly or partially invalid, void or otherwise unenforceable by a court of competent jurisdiction, the remainder of this Contract shall not be affected thereby, and every other term, provision, covenant or condition of this Contract shall be valid and enforceable to the fullest extent permitted by law.
- 15.13 Successors. Subject to the limitations on assignment set forth in subsection 15.1 above, all terms of this Contract shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective heirs, legal representatives, successors, and assigns.
- 15.14 Time. Time is of the essence of each provision of this Contract.

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- 15.15 Time Period Computation. All periods of time referred to in this Contract shall include all Saturdays, Sundays and state or national holidays, unless the period of time specifies business days. If the date or last date to perform any act or give any notice or approval falls on a Saturday, Sunday or state or national holiday, such act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday or state or national holiday.
- 15.16 Waiver. The waiver by one party of the performance of any term, provision, covenant or condition shall not invalidate this Contract, nor shall it be considered as a waiver by such party of any other term, provision, covenant or condition. Delay by any party in pursuing any remedy or in insisting upon full performance for any breach or failure of any term, provision, covenant or condition shall not prevent such party from later pursuing remedies or insisting upon full performance for the same or any similar breach or failure.
- 15.17 Corporation in Good Standing. If Consultant is a California corporation, Consultant warrants that it is a corporation in good standing and is currently authorized to do business in California.
- 15.18 Sections that Survive Termination. The following sections or articles shall survive the termination of this Contract: sections 8.7, 8.8, 10.1, 11.2 and Articles 7 and 13.

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SIGNATURE PAGE

IN WITNESS WHEREOF, County and Consultant have executed this Contract effective as of the date first set forth above

COUNTY OF SAN DIEGO

[CONSULTANT'S NAME]

By: _____
WINSTON F. McCOLL, Director
Department of Purchasing and Contracting

By: _____

Print Name

Print Title

Date: _____

**APPROVED AS TO FORM AND LEGALITY
COUNTY COUNSEL**

By: _____
Senior Deputy

By: _____

Print Name

Print Title

Date: _____

[Note: if Consultant is a Calif. corp., need proof (resolution from corp.'s board, etc.) that person who signs contract is authorized to sign, or need one signature from each of the following two groups:

1. Executive Group: President, Vice-president or Chairman of Board; and
2. Management Group: Secretary, Assistant Secretary, Assistant Treasurer or Chief Financial Officer. (Corp. Code § 313.)]

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[This break is to allow you to add the other documents electronically to this contract, eg: Exhibit A, [A-1] B, and/or C . If not adding these documents electronically, then delete this page